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REPORT OF THE WORKING GROUP ON A DRAFT DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Chairman-Rapporteur: Mr. Ronald A. Walker (Australia)

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INTRODUCTION

1. The Commission on Human Rights, by decision 1985/112 of 14 March 1985, established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. This was approved by the Economic and Social Council, in decision 1985/152 of 30 May 1985. The Working Group held its first to fifth sessions prior to the forty-second to forty-sixth sessions, respectively, of the Commission on Human Rights. Its reports to the Commission being contained in documents E/CN.4/1986/40, E/CN.4/1987/38, E/CN.4/1988/26, E/CN.4/1989/45, and E/CN.4/1990/47.

2. The Commission, by resolution 1990/47 of 6 March 1990, decided to continue at its forty-seventh session its work on the elaboration of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, using as a basis the views expressed and proposals made in the Working Group at its previous sessions. The Economic and Social Council, by resolution 1990/40 of 25 May 1990, authorized an open-ended working group to meet for a period of eight days prior to the forty-seventh session of the Commission on Human Rights with a view to continuing the work on the draft declaration.

3. The Working Group held 11 meetings altogether from 16 to 25 January 1991, and on 28 February 1991. The session was opened by Mr. Jan Martenson, Under-Secretary-General for Human Rights.

Election of the Chairman-Rapporteur

4. At its first meeting on 16 January 1991, the Working Group re-elected, by acclamation, Mr. Ronald A. Walker (Australia) as Chairman-Rapporteur.

Participation

5. The meetings of the Working Group were open to all members of the Commission on Human Rights and were attended by representatives of the following Member States of the Commission: Argentina, Australia, Austria, Brazil, Canada, China, Colombia, Cuba, Czechoslovakia, Ethiopia, France, Germany, Hungary, India, Mexico, Morocco, Peru, Philippines, Portugal, Senegal, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, and Venezuela.

6. The following States, non-members of the Commission, were represented by observers: Bulgaria, Egypt, Finland, Lebanon, Norway, Poland, Sudan, Syrian Arab Republic and the United Kingdom of Great Britain and Northern Ireland.

7. The following non-governmental organizations in consultative status with the Economic and Social Council also sent observers to the meetings: Amnesty International, International Association of Penal Law, International Federation of Human Rights and International Commission of Jurists.

Documents

8. The Working Group had before it the following documents:

E/CN.4/1991/WG.6/L.1	Provisional agenda of the pre-sessional open-ended Working Group
E/CN.4/1989/45	Report of the Working Group on its fourth session
E/CN.4/1990/47	Report of the Working Group on its fifth session
E/CN.4/1991/WG.6/CRP.1	Text proposed by the delegation of Canada and the observer delegation of Norway (chap. IV, art. 3 (b) and art. 4)
E/CN.4/1991/WG.6/CRP.2	Text proposed by the delegation of the United States of America (chap. IV, additional subparagraph art. 3)
E/CN.4/1991/WG.6/CRP.3	Text proposed by Amnesty International (chap. I, article B, chap. IV, art. 3)
E/CN.4/1991/WG.6/CRP.4	Text proposed by the delegation of Senegal (chap. V)
E/CN.4/1991/WG.6/CRP.5	Text proposed by the delegation of Austria (chap. V, arts. A and B)
E/CN.4/1991/WG.6/CRP.6	Text proposed by the delegation of Cuba (chap. V, closing article)
E/CN.4/1991/WG.6/CRP.7	Texts agreed upon in the Informal Drafting Group on 17 January 1991 (chap. IV, art. 3 (b) and chap. I, B)
E/CN.4/1991/WG.6/CRP.8	Text agreed upon in the Informal Drafting Group on 18 January 1991 (chap. IV, art. 3 (c))
E/CN.4/1991/WG.6/CRP.9	Formulation of paragraph 4 still under consideration in the Informal Drafting Group, presented by its Chairman
E/CN.4/1991/WG.6/CRP.10	Proposal of the delegation of India (chap. IV, para. 4)
E/CN.4/1991/WG.6/CRP.11	Proposal of the delegations of Portugal and Sweden (chap. II, art. 1)
E/CN.4/1991/WG.6/CRP.12/Rev.1	Proposal of the delegation of China (chap. V)

E/CN.4/1991/WG.6/CRP.13	Proposal of the delegation of Portugal (chap. V, art. C)
E/CN.4/1991/WG.6/CRP.14	Proposal of the delegation of Cuba (chap. III, art. "X")
E/CN.4/1991/WG.6/CRP.15	Compromised proposal by the delegation of Senegal (chap. V)
E/CN.4/1991/WG.6/CRP.16	Texts agreed upon in the Informal Drafting Group on 22 January 1991 (chap. IV, art. IV and chap. V, art. A)
E/CN.4/1991/WG.6/CRP.17/Rev.1	Proposal of the delegation of Cuba (chap. I)
E/CN.4/1991/WG.6/CRP.18	Proposal of the delegation of Cuba (Preamble)
E/CN.4/1991/WG.6/CRP.19	Proposal of the observer delegation of the International Commission of Jurists (Proposed addition to chap. IV, art. 4 (on second reading))
E/CN.4/1991/WG.6/CRP.20	Proposal of the observer delegation of the International Commission of Jurists (Proposed addition to chap. IV, art. 3 (c) (on second reading))
E/CN.4/1991/WG.6/CRP.21/Rev.1	Proposal of the delegation of Colombia (Preamble)
E/CN.4/1991/WG.6/CRP.22	Text agreed upon in the Informal Drafting Group on 23 January 1991 (chap. V, B)
E/CN.4/1991/WG.6/CRP.23	Proposal of the delegation of Cuba (chap. V)
E/CN.4/1991/WG.6/CRP.24	Text agreed upon in the Informal Drafting Group on 24 January 1991 (chap. V, C)

Organization of work

9. The Chairman-Rapporteur, Mr. Walker, thanked the Working Group for his re-election and underlined the importance of the remarks made by the Under-Secretary-General, Mr. Jan Martenson, regarding the connection between human rights and peace. Mr. Walker added that in a period overshadowed by war the protection of human rights defenders was deserving of high priority.

10. Moving on to the matter of the organization of work, the Chairman-Rapporteur referred to the proposal accepted by the Group at last year's session for its work in 1991 which was to consider first any remaining paragraphs of chapters III and IV and to begin consideration of provisions for a chapter V, taking into account any previously prepared text. He reminded delegates that the Group had also agreed that it could take up for consideration additional elements for the Preamble and chapter I.

11. Bearing these proposals in mind, he suggested that consideration of proposals begin with chapter IV followed by chapters III and V. Any additional elements to the Preamble and chapter I could be taken up as they arose. This suggestion met with general approval.

12. As to working methods, the Chairman drew attention to the successful past practice of establishing an informal drafting group for the purpose of offering prepared texts to be discussed at the full Working Group in order to best utilize the time made available to the Group, and suggested that the practice be continued.

13. The Working Group observed general consensus on this matter. It was further decided that the delegate of Norway, Mr. Helgesen, be appointed Chairman of the Informal Drafting Group.

14. The Chairman-Rapporteur noted in this connection that it would be appropriate if the timing of plenary and informal drafting group meetings were to be decided on a day-to-day basis. The participants agreed to this flexible programme of work.

15. A number of delegations suggested that the Working Group should avoid re-opening discussion of any text which had been adopted at first reading. It was agreed to avoid re-opening such texts, but substantive debate on points not previously decided might lead to agreement to amendments to previously approved texts.

16. The Chairman-Rapporteur recalled that the Working Group agreed to give the highest priority to the completion of the first reading.

17. The delegations of Cuba and Norway suggested that old proposals should be available for consultation, estimating that they could be a good reference point. This was accepted. The Chairman-Rapporteur said he felt that an extensive use of old documents could be unhelpful and he invited new proposals concerning chapter IV and any other part of the draft that had not yet been finally considered. If participants wanted proposals submitted at earlier sessions of the Working Group to be considered, these should be resubmitted. This was accepted.

18. It was agreed that issues referring to text already adopted in first reading and causing further concern to certain delegations, could be considered at second reading. Proposals for reasonable amendments or

alterations to the first-reading text could be submitted at this session with a view to giving advanced notice of points to be raised at second reading; but any substantive debate should be left to second reading.

19. It was further accepted that as a general rule the plenary meetings would provide delegations with the opportunity to present textual proposals and to state their views on substantive issues. The Working Group also agreed upon a deadline for the submission of new substantive proposals to the remaining chapters of the draft declaration.

20. The Informal Drafting Group met on a regular daily basis after the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th meetings of the Working Group.

21. In the course of its meetings, the Working Group provisionally adopted at first reading, texts including elements of chapters I, III, IV and V (see annex I of the present report). It further extensively considered texts including elements for the Preamble, chapters I, III and V (see annexes II and III of the present report).

22. A compilation of all these texts showing the present state of the whole draft declaration is given in annex VI.

Consideration and the drafting of articles

Preamble

23. The Working Group considered draft texts for the Preamble of the declaration at its 7th and 10th meetings held on 22 and 25 January 1991.

24. It had before it the following proposals:

(a) Proposal by the delegation of Cuba (E/CN.4/1991/WG.6/CRP.18), the text of which reads as follows:

[Unofficial English translation]

Preamble

(New paragraph for eventual inclusion)

"Recalling the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of human rights and fundamental freedoms for all persons in all countries of the world (to become second preambular paragraph).

Bearing in mind the important role played by other universal and regional conventions and declarations in the promotion and protection of human rights and fundamental freedoms (to be included after the present third preambular paragraph in annex II of document E/CN.4/1990/47)."

The proposal was introduced by Cuba at the 7th meeting.

(b) Proposal by the delegation of Colombia (E/CN.4/1991/WG.6/CRP.21/Rev.1), the text of which reads as follows:

[Unofficial English translation]

"Recognizing the right and the responsibility of individuals and groups to promote and disseminate human rights and fundamental freedoms in the international sphere as well as under national jurisdiction."

The draft proposal was introduced by the delegation of Colombia at the same meeting.

Consideration of existing texts

25. Several participants pointed out that paragraphs "D" and "E" in annex II of E/CN.4/1990/47 would need to be preceded by a gerund such as "Recognizing that". It was agreed this was a second-reading issue.

Consideration of CRP.21/Rev.1

26. The Working Group took up consideration of the preambular proposal of the delegation of Colombia (CRP.21/Rev.1) at its 10th meeting.

27. Many delegations favoured the idea expressed in CRP.21/Rev.1 but some hesitated adopting it at the first reading because of what they saw as its imperfect wording. One delegation questioned whether it was possible to "disseminate" human rights and freedoms and suggested that new wording be introduced and examined at the second reading. Other delegates objected to the wording "individuals and groups" in the first line while the phrase used in the declaration was "everyone, individually and in association with others".

28. The Chairman-Rapporteur stated that although the original Spanish text was clear, a better English translation needed to be procured. Until that time, the Working Group should comment upon, and possibly adopt, the ideas expressed in the proposal. If it were adopted, the proposal's English wording could be refined at the second reading. This was not accepted. Sensing no immediate willingness on the part of the Working Group to adopt the text of CRP.21/Rev.1 at the first reading, yet acknowledging support for the idea contained therein, the Chairman-Rapporteur proposed denoting it "G" and placing it with the other preambular paragraphs in annex II which contained the texts extensively discussed but not yet fully accepted by the Working Group. It was so decided.

Consideration of CRP.18, first paragraph

29. The Working Group, at the same meeting, considered the proposal of the Cuban delegation in CRP.18.

30. Beginning with the general consideration of the first preambular paragraph, the delegation of Cuba said that, having consulted with several other delegations, it would agree to delete the phrase "persons in all countries of the world" from the last line. Responding to an observation by the delegation of Sweden, the Cuban delegation also agreed to delete "respeto" from the Spanish text of its proposal.

31. The delegation of Norway suggested putting "universally recognized" before the words "human rights and fundamental freedoms" in square brackets in order to be consistent with previously made decisions.

32. With regard to the substance of the paragraph, the delegation of France stated that the principles of the declaration should also be consistent with the principles contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

33. The delegation of Portugal proposed adding the words "without discrimination of any kind" to the end of the sentence. It noted that such a provision reflected an uncontroversial and fundamental principle, as stated in several articles of the Charter of the United Nations.

34. The delegation of Sweden, supported by the observer delegation of the International Commission of Jurists, objected to the proposed wording of the paragraph which was, in its view, not clear. It proposed the following wording based on preambular paragraph 4 of both Covenants on Human Rights, which read:

> "Recalling the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms."

35. The delegation of Portugal and the observer delegation of Amnesty International favoured wording borrowed from the International Covenant on Civil and Political Rights which made clearer the linkage between respect and observance of human rights. Specifically, the observer delegation of Norway preferred utilization of the words "to promote universal respect for, and observance of" in place of "in the promotion and protection of". The Cuban delegation accepted this amendment.

36. In view of the foregoing general comments, the Chairman-Rapporteur of the Working Group concluded that further polishing remained to be done on the text in the Informal Drafting Group. The Chairman-Rapporteur suggested to denote the first paragraph of CRP.18 as paragraph "H", and to add it to the preambular paragraphs in annex II.

37. The delegation of Cuba agreed to the denoting of the proposed paragraph as "H" after the Chairman-Rapporteur had confirmed that the letter "H" would have no influence at all on its future position in the Preamble when it is finalized. All the preambular paragraphs were assigned letters instead of numbers for this purpose. The Working Group agreed to assign the letter "H" to the first paragraph of CRP.18 and add it to annex II and keep the textual reference to its authors' favoured position in the Preamble. The Working Group also agreed to keep in mind the alternative proposal made by the delegation of Sweden.

Consideration of second paragraph of CRP.18

38. The Working Group then took up consideration of the second preambular paragraph of the delegation of Cuba's proposal contained in CRP.18.

39. Responding to these concerns, the delegation of Cuba stated that in light of other references in the Preamble to the importance of other human rights instruments as to the promotion and protection of human rights and the Optional Protocol to the Covenant on Civil and Political Rights, it believed that it was fully appropriate and consistent with the purposes of the declaration to refer to the role still being played in this arena by other human rights documents.

40. Moreover, the delegation of Cuba thought that an appeal to States to accede to or ratify the declaration would lend itself to polemics. Several universal covenants thereunder, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Prevention and Punishment of the Crime of Genocide have not been ratified by certain States for political, social and cultural reasons. It underlined its position that the Preamble's purpose was to highlight these rights and not to antagonize States by exhortations.

41. The delegation of Cuba declared its readiness to initiate another paragraph to be added to the Preamble to meet the concerns of certain delegations.

42. The delegation of Colombia said that the Preamble of the declaration should also underline regional human rights legislation. The regional human rights instruments had made considerable headway in improving upon global human rights documents, and represented the actual character of the region more accurately. Universal human rights policy from the United Nations perspective de-emphasized regional factors, perhaps viewing them as secondary. Regional covenants had also succeeded in bringing States together and, therefore, had the benefits of continuity and vigour.

43. Several participants accentuating the role of a regional human rights system, at the same time stressed the importance of the United Nations human rights system.

44. A brief discussion focused on the mentioning of regional systems on the one hand and using the term "universally recognized human rights and fundamental freedoms" on the other. The United States delegation reminded the Working Group of the controversial nature of many tenets contained in regional human rights instruments. For example, the right to life of an unborn foetus as recognized in the American Convention on Human Rights. Conflict would arise, in his view, if the declaration attempted to take account of regional human rights conceptions. A debate on regionally accepted human rights, although in the delegation's view was very important and potentially rewarding, should take place at another time. The delegation of the United States favoured retaining the language "[universally recognized] human rights and fundamental freedoms" because little attention had been paid as yet in the Working Group to resolving exactly which rights and freedoms the declaration sought to address.

45. Finally, the Working Group agreed to denote this preambular paragraph "J" and reproduce it in annex II to the present report.

Chapter I

46. Three proposals concerning chapter I were discussed at the 2nd, 5th and 7th meetings of the Working Group.

47. The Working Group had before it:

(a) a text (E/CN.4/1991/WG.6/CRP.3) introduced by the observer delegation of Amnesty International and subsequently replaced by the second paragraph of a text (E/CN.4/1991/WG.6/CRP.7), agreed upon in the Informal Drafting Group;

(b) a draft article (E/CN.4/1991/WG.6/CRP.17), proposed by the delegation of Cuba and subsequently replaced by a revised draft (E/CN.4/1991/WG.6/CRP.17/Rev.1), also proposed by the delegation of Cuba.

Consideration of CRP.3 and CRP.7 (second paragraph)

48. At the 2nd meeting of the Working Group the observer delegation of Amnesty International proposed the following text (CRP.3):

> Either add to chapter I, article B:
>
> "Such steps shall be taken, in particular, to give practical effect to the rights set forth in this declaration"
>
> or adding a new subparagraph to chapter IV, article 3:
>
> "ensure that the necessary legislative, administrative and other measures are taken to give practical effect to the rights referred to in this declaration".

49. The delegation of Cuba noted that re-opening the discussion on chapter I would surely be in contrast with the agenda agreed upon at the first meeting. With regard to the contents of the proposal, it proposed that the expression "set forth" be changed to "referred to" in article B, chapter I. As to the positioning of the proposal, a preference was expressed that it be incorporated within chapter IV.

50. As to the first point raised by the delegation of Cuba, the Chairman-Rapporteur referred to the contents of paragraph 145 in E/CN.4/1990/47 in which "it was also agreed that the group may take up for consideration additional elements for the Preamble and chapter I".

51. The delegation of China noted that paragraph 145 of last year's report confirmed the view of the Chinese delegation that old issues adopted in the first reading by the Working Group might be further discussed if some new elements emerged, provided that this discussion would not cause any substantive debate, or breaking the consensus already reached by the Working Group.

52. Concerned at the possible positioning of the proposal in CRP.3 the delegation of Senegal noted that the general balance reached last year could

be affected by the undue stress placed in chapter I on the obligations of the State. It preferred that the proposal not be discussed in depth at that point because it might impede the progress of the Working Group.

53. The observer delegation of Amnesty International stated that it understood that the task of the Working Group was not to set forth new rights but to elaborate existing rights which States are already obliged to implement. Its proposal is aimed at making the declaration consistent with that obligation. The delegation of Norway requested that emphasis be placed on the last part of the second paragraph of annex I, chapter I, B, suggesting that "this right" be replaced by "this declaration".

54. The delegation of Norway also agreed with the Cuban delegation's proposal to replace "set forth" with "referred to", and expressed the desire to be flexible regarding any proposal. Moreover, the Norwegian delegation affirmed that many of the problems raised in this discussion could be overcome through a general enunciation on chapter I and a definitive solution could be found during the second reading.

55. Taking into account the different positions among members of the Working Group on this proposal, the Chairman-Rapporteur noted that while there was a general appreciation for this proposal, the question raised in the discussion could be better resolved in the Informal Drafting Group.

56. The text was then referred to the Informal Drafting Group.

57. The Chairman of the Informal Drafting Group reported to the 5th meeting of the Working Group that the members believed that the second alternative in CRP.3 would limit the whole concept if it were to be placed in chapter IV. They agreed to place the text in chapter I.

58. Regarding chapter I, B (2), agreement existed in the Informal Drafting Group to delete the second sentence of the paragraph and introduce a new paragraph. This would make clear that the State is under an obligation to take measures to give effect to all rights, not just one right (as implied in the old wording "This right"). The phrase would thus read (CRP.7, second paragraph):

> "Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed."

59. The Chairman-Rapporteur having opened the floor for discussion of the text submitted by the Informal Drafting Group, the Chinese delegation proposed that "guaranteed" be replaced by "realized".

60. The Cuban delegation proposed to add "realized" before the word "guaranteed".

61. The delegation of India stated that it could accept the text adopted by the Informal Drafting Group but had not welcomed it. The delegation agreed that the word "guarantee" meant effectively "to give effect to". Thus, he favoured the more clipped and precise original version (CRP.3). That text, he noted, gave the State more responsibilities, had more substance, and was more precise.

62. He also believed that the members of the Drafting Group were in agreement on the point referred to by the delegations of China and Cuba. Thus, the phrase should read "are effectively realized and guaranteed".

63. The delegation of France raised the point that adding the word "realized" could create an ambiguity in the text and change the general thrust of the proposal. "Guaranteed" implied that legal means exist which can be utilized in defence of rights. The word "realized" was less clear, according to the delegation, because it appeared to imply that people will be able to exercise these rights. Addressing this remark, the Chinese delegation said that the word "realized" had been added to prevent the rights from existing only on paper. It understood the word "realized" to connote the end result of the rights referred to. It expressed its reluctance to agree to the text if only the word "guarantee" was used.

64. The delegation of India suggested that the words "to give practical effect to" be used instead of "guaranteed" or "realized" or a combination thereof. The paragraph would then read "ensure that the necessary legislative, administrative and other measures are taken to give practical effect to the rights and freedoms referred to in this declaration". Several delegations agreed upon the proposal, yet others asserted that there was little difference between the two formulations except that the text of the Drafting Group was broader and more far-reaching.

65. The above proposals were thereupon withdrawn, and the text submitted by the Informal Drafting Group was adopted by the Working Group (for the text adopted, see annex I).

Consideration of CRP.17 and CRP.17/Rev.1

66. At the 7th meeting, on 22 January 1991, the delegation of Cuba introduced a proposal contained in CRP.17. The text reads as follows:

[Unofficial English translation]

Chapter I

"C"

> "The implementation of the rights and freedoms referred to in this declaration shall be governed by both the municipal law in effect in the respective country provided it is not in contradiction with the purposes and principles of the Charter of the United Nations, and the international obligations accepted by the State through human rights instruments."

Introducing this proposal, the delegation of Cuba explained that the text was intended to be inserted in chapter I. However, it said it would not object if the Group preferred that the text be placed in chapter V.

67. The Working Group accepted the proposal of its Chairman-Rapporteur not to begin a sustained debate thereon at this stage, but to consider the proposal contained in CRP.17, either after the completion of chapter V or before taking up further consideration of chapter I.

68. At the 10th meeting, on 25 January 1991, the delegation of Cuba submitted a revised version of CRP.17 (CRP.17/Rev.1), which reads as follows:

[Unofficial English translation]

Chapter I

"The domestic legislation in effect in the respective country, and applicable international obligations or commitments accepted by the State, shall govern the effective materialization of all actions and activities related to the rights and freedoms referred to in this declaration."

Chapter III

69. The Working Group took up consideration of two proposed texts for chapter III at its 6th meeting on 21 January 1991. The first text (E/CN.4/1991/WG.6/CRP.11) was proposed by the delegations of Portugal and Sweden. The second text (E/CN.4/1991/WG.6/CRP.14) was proposed by the delegation of Cuba.

Consideration of CRP.11 and 14

70. The text proposed by the delegations of Portugal and Sweden (CRP.11) refers to chapter III, article 1 and reads as follows:

"(d) to solicit, receive and utilize for the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms voluntary financial contributions."

71. The Chairman recalled that the matter of financial contributions had been extensively discussed last year and he welcomed this new formulation which avoids the points which had proved controversial in 1990.

72. The delegation of Cuba introduced a draft paragraph for chapter III, identified as CRP.14, that he suggested should be placed at the end of this chapter. The proposal reads:

[Unofficial English translation]

"For the purpose of helping to ensure the necessary independence and freedom of action in their activities directed to the promotion and protection of [universally recognized] human rights and fundamental freedoms, individuals, groups and institutions shall solely employ for such activities funds and resources deriving from sources domiciled in the country in which the activities are to be undertaken. All remittances of such funds or other resources from abroad [from foreign sources?] shall be subject, on a non-discriminatory basis, to the national regulations applicable to such transactions in the country in question."

73. The delegation of Cuba explained that the article established a linkage between the need to protect the independence of freedom of action of all activities run by individuals, groups and institutions concerned in the promotion and protection of human rights and the need to protect the socio-political concepts and the culture of a country. The financial resources donated to individuals, groups and institutions acting in the field of human rights should come from national sources. All the contributions, financial or not, coming from foreign individuals, groups or institutions should be subject to the national regulations concerning such a transaction.

74. The Chairman noted that CRP.11 and CRP.14 covered similar ground and should be discussed together by the Informal Drafting Group at a later date.

75. In the event, however, the issue was not further addressed substantively at the present session and the Working Group decided at its 11th meeting to include the two texts, together with the text from the 1989 report, in annex III of this report for further consideration at the next session.

Chapter IV

76. During the 1st, 2nd, 3rd, 4th, 5th and 7th meetings, the Working Group discussed 11 proposals concerning chapter IV. The proposals were identified as E/CN.4/1991/WG.6/CRP.1, proposed by the delegations of Canada and Norway; E/CN.4/1991/WG.6/CRP.2, proposed by the delegation of the United States; E/CN.4/1991/WG.6/CRP.3, proposed by the observer delegation of Amnesty International; E/CN.4/1991/WG.6/CRP.6, proposed by the delegation of Cuba; E/CN.4/1991/WG.6/CRP.7, CRP.8, CRP.9 and CRP.16 proposed by the Informal Drafting Group; E/CN.4/1991/WG.6/CRP.10, proposed by the delegation of India; E/CN.4/1991/WG.6/CRP.19 and CRP.20, proposed by the observer delegation of the International Commission of Jurists.

77. The delegation of Cuba recalled that there was no unanimity on the word "everyone" in last year's work on the "chapeau" of chapter IV, paragraph 2 (see para. 103 of E/CN.4/1990/47). He stated that there was a linkage with the statement contained in paragraph 112 of E/CN.4/1990/47, proposed by Germany.

78. The delegation of Germany asked that the following statement be again included in the report of the Working Group on chapter IV:

> "Human rights directly protect the individual: therefore, in accordance with the relevant instruments for the protection of human rights, the Government of Germany is of the opinion that the decision as to whether, after a violation of such rights, recourse is to be sought to courts of law, is reserved for the individual who considers his or her rights to have been violated."

In view of this statement the delegation would wish to seek clarification on the right to legal recourse during the second reading of the draft declaration.

79. The delegation of the United Kingdom asked that the following statement be again included in chapter IV, article 2 (b) of the report of the Working Group:

> "It is the opinion of the delegation of the United Kingdom that in the event of an effective remedy being available through a competent legislative or other authority provided for by the legal system of the State, there should be no general duty to provide a further right such as that referred to in chapter IV, article 2 (b) and it is the understanding of the delegation of the United Kingdom that the text of article 2 when considered at second reading would be redrafted to reflect these points more adequately."

80. The observer delegation of Amnesty International raised the question of the need for a completing clause regarding the duty of Governments to safeguard human rights. Such a clause should be included in chapter IV or chapter I. The delegation of Norway supported this need. For further consideration of their point see the discussion of CRP.3 under chapter I above (see paragraphs 48-65).

81. According to the delegation of Cuba, the rights of the State might also be included in chapter IV. The Working Group could also take into consideration the duties of human rights groups and the way in which rights are to be exercised.

Consideration of CRP.1 (first paragraph) and CRP.7

82. At the 1st meeting, the delegation of Canada and the observer delegation of Norway submitted a proposal for chapter IV, article 3 (b) (CRP.1) which reads as follows:

> "encourage and support the development of other effective institutions for the promotion of [universally recognized] human rights and fundamental freedoms, including ombudsmen and human rights commissions."

83. This text was referred to the Informal Drafting Group.

84. At the 4th meeting, the delegate of Norway, as Chairman of the Informal Drafting Group, reported on the results of the work of the Informal Drafting Group. The Group had agreed upon a text (CRP.7) to be included in chapter IV, as subparagraph (b) of article 3, and which reads:

> "... encourage and support the development of further institutions for the promotion and protection of [universally recognized] human rights and fundamental freedoms in all territory under its jurisdiction, such as ombudsmen, human rights commissions and other appropriate mechanisms."

85. At the 5th meeting, on 18 January 1991, the Cuban delegation, opening the debate on the text agreed upon in the Informal Drafting Group (CRP.7), reaffirmed its consent to the text, and noted that the phrase "other appropriate mechanisms" should be seen in connection with the social and cultural identity of the country concerned.

86. Regarding the word "support", the United States delegation expressed what had been preliminary hesitation relating to certain sets of financial support conceivably implied in the text. However, it was now glad to join the consensus, provided the word "support" was read to include support other than of a financial nature. The Chairman-Rapporteur then stated that the text did not imply a commitment on the part of the State to provide financial support.

87. The delegation of India drew attention to what it called a grammatical incorrectness of the phrase "in all territory under its jurisdiction" and proposed either "all the territory", "in the territory" or "in the entire territory".

88. A second issue, going to the substance of the phrase "in all territories under its jurisdiction" was raised by the delegation of India. The concept of territories under jurisdiction had raised many unanswered questions under international law in recent decades, particularly regarding jurisdiction over military bases given by one State to another. Consequently, this delegation suggested that the "ambiguous and problematical phrase" ought to be reformulated.

89. The delegation of Norway noted that the phrase "in all territory" has been used in many United Nations documents and had never raised any problems. As to the content, it saw no problem presented; the legal issue of jurisdiction could not affect the basic principle of international law that a State is responsible for acts and ommissions within its own jurisdiction only.

90. Referring to the wording used in article 2 of the Covenant on Civil and Political Rights, the delegation of Sweden suggested that the purpose of the phrase under discussion was to stress the obligations of States to protect all individuals within its jurisdiction. The declaration and the Covenant did not purport to address the issue of which country has jurisdiction. Other delegations echoed this sentiment.

91. There followed extensive discussion of the point raised by the Indian delegation, concluding in agreement to examine the wording further at second reading.

92. The delegation of Cuba stated that the plenary session should accept the text approved by the Informal Drafting Group. If consensus was really difficult to reach, it could be more convenient to discuss the text again in the Informal Drafting Group.

93. The Working Group adopted subparagraph 3 (b) of chapter IV without prejudicing its final placement in chapter IV or another chapter, and on the understanding that the question raised by the delegation of India could be reconsidered in second reading (for the text, see annex I).

94. The observer delegation of Amnesty International stated that insofar as the proposal of the delegation of India was aimed at encouraging international co-operation in promoting national institutions for the protection of human rights, it hoped this element could be considered at the second reading.

95. The observer delegation of Norway expressed some doubts concerning the view provided by Amnesty International. In its view, chapter IV dealt with domestic remedies and not international issues.

Consideration of CRP.2 and CRP.8

96. At the 1st meeting, on 16 January 1991, the delegation of the United States, having evaluated the significance of article 1 and article 2 of chapter IV, proposed an additional subparagraph to article 3, contained in CRP.2. The text reads as follows:

> "conduct a prompt and impartial investigation wherever there are reasonable grounds to believe that a violation of [universally recognized] human rights or fundamental freedoms has been committed in any territory under its jurisdiction."

97. At the 3rd meeting, on 17 January 1991, the observer delegation of the United Kingdom stated that the purpose of the declaration was to reinforce rights which already exist and so the declaration should not attempt to create new rights and responsibilities. The obligation on the State in international law is to ensure that any person whose rights or freedoms are violated shall have an effective remedy. The delegation further stated that this was a matter of principle, but that it was flexible as to any text that the Drafting Group would consider in this regard.

98. It was agreed to submit CRP.2 to the Informal Drafting Group for further discussion.

99. At the 5th meeting, on 18 January 1991, the Chairman of the Informal Drafting Group reported that, after examining the United States proposal (CRP.2), the Informal Drafting Group had agreed upon the following text which was reproduced in CRP.8:

> "... conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a [serious] violation of [universally recognized] human rights and fundamental freedoms has occurred in any territory under its jurisdiction."

100. The Chairman of the Informal Drafting Group further reported that no consensus had been reached on the word "serious". The Informal Drafting Group had agreed to put it in square brackets and return to this point during the second reading.

101. Observing that any violation of human rights and fundamental freedoms is serious, the Chairman-Rapporteur said that the word "serious" in the text appeared to be limitative, implying a "threshold" below which no obligations to investigate or inquire would arise.

102. The delegation of the United Kingdom said that there remained stylistic and grammatical problems with the text which it hoped could be remedied during second reading. It suggested that the beginning of the text could read:

> "conducts a prompt and impartial investigation or inquiry or ensures that an investigation or inquiry takes place whenever ..."

103. The Chairman-Rapporteur asked whether the phrase "human rights and fundamental freedoms" or "human rights or fundamental freedoms" should be used. The word "or" created a stricter standard, requiring the State to investigate alleged violations of either, and not requiring the violation of both.

104. In response to the Chairman-Rapporteur's comment, the delegation of Norway indicated that "human rights and fundamental freedoms" was the standard term used in human rights documents. The Working Group decided to handle the issue during the second reading.

105. The delegation of India expressed its pleasure at noticing the word "any" before the word "territory", as it had made numerous suggestions earlier in the meeting to change the language from "all territory".

106. The delegations of Sweden and Portugal stated for the record that they were opposed to the inclusion of the word "serious" because any violation of human rights was serious. They further expressed their view that the Group should not establish, or appear to establish, any hierarchy of violations of human rights and noted that, in their view, the phrase "reasonable ground" sufficed to limit any governmental inquiry to serious allegations.

107. The Senegalese and British delegations recorded their support for keeping "serious" in the text.

108. The French delegation commented during the discussion on whether to include the word "serious" that an alternative solution would be to opt for a wording which distinguished between presumption of a state of affairs and presumption of a violation.

109. The delegation of the United States recorded that it would suggest at the second reading that this text be placed higher in chapter IV.

110. The Working Group adopted the text as submitted by the Informal Drafting Group contained in CRP.8 as article 3 (c) of chapter IV (for the text, see annex I).

Consideration of CRP.1 (second paragraph), CRP.9, CRP.10 and CRP.16

111. At the 1st meeting the delegation of Canada and the observer delegation of Norway submitted another proposal for chapter IV, article 4 (CRP.1), which reads as follows:

> "Professional individuals and groups (including the military, doctors, lawyers and the judiciary, scientists, teachers, police and correctional officers) have the right and responsibility to maintain in their activities the highest standards of professional conduct and ethics, paying the utmost attention to respect of the dignity and rights of every individual."

The main goal of this proposal was to improve the role of national institutions in promoting human rights and assisting human rights defenders.

112. The delegation of Norway drew attention to the linkage between its proposal regarding article 4, chapter IV, and paragraph A, chapter I included in E/CN.4/1990/47. The delegation of Norway thought that the connection between the ethic of different professions and the provision affirming that "no one shall participate in violating human rights and fundamental freedoms" deserved more elaboration.

113. The proposal was referred to the Informal Drafting Group.

114. At the 5th meeting, the Chairman of the Informal Drafting Group reported that the Group drafted a text of article 4 of chapter IV, taking also into account a proposal submitted by the delegation of France to the Drafting Group. This document (CRP.9) was considered a substantial improvement of the text introduced by the delegations of Canada and Norway as CRP.1. According to the Chairman, the problem remained as to how to define more precisely which groups and individuals were indicated by the proposed article 4, and to find language to define a profession. CRP.9 reads as follows:

> "Professional individuals or groups have in their activities the right and responsibility to promote and protect [universally recognized] human rights and fundamental freedoms and to respect the dignity of every individual and to observe [applicable] international and national standards in their area of specialization and in their respective countries."

115. The Chairman of the Informal Drafting Group reported two areas of disagreement. One was whether to use the word "applicable" before "international and national standards", between the words "and" and "in" in the last line, or after the word "specialization". Others wanted the word to be inserted in the draft to refer to respective countries.

116. The indistinctness of the wording "professional individuals or groups" caused concern for many delegations. Concern was voiced that the word "profession" was very broad, including accountants, engineers, physicists, and sometimes home-makers and students. Amnesty International recommended stating that the declaration is concerned with professions whose activities have an impact on human rights.

117. The delegation of Cuba said that it had understood the intention of the Informal Drafting Group to be that the term "applicable" covered both the area of occupational specialization and respective countries. In his view, therefore, the final "and" in the sentence was not superfluous. Further, regarding the phrase "and to respect the dignity of every individual", discussion was still taking place on the Drafting Group as to replacing the word "respect" with "protect". Cuba favoured this change of wording because in its view the declaration should make clear that it promotes and protects dignity.

118. The word "applicable" was proposed by the delegation of Sweden in order to replace the expression "in their respective countries". Furthermore, the Swedish delegation stated that the discussion should continue in the Informal Drafting Group.

119. A lengthy debate took place, in which many delegations participated as to the words "applicable" in their respective countries.

120. In order to avoid redundant wording and to make the text more concrete and essential, the delegation of India proposed an alternative text, identified as CRP.10, that reads:

> "Individuals or groups have in their professional activities to promote and respect human rights and fundamental freedoms and to observe applicable international and national standards."

121. The delegation of Cuba stressed the importance of the word "applicable" to avoid interference of the declaration with professional standards or with statutes applying to the military or other individuals employed in organizations related to the maintenance of public order. The cumbersome wording of the text is due to the compromise solution reached in the Informal Drafting Group.

122. Other delegations shared the concern of the delegation of Cuba that the declaration should not conflict with national laws governing professional and ethical standards, which in many States may be more restrictive than the declaration intended. Police were not automatically covered by the term "professional" in the English language, remarked one delegation. Consequently, the Group ran the risk, in its view, of excluding police forces from the responsibility of acting in a manner consistent with the declaration.

123. Taking account of the different professional ethical standards, Norway suggested the inclusion of the following sentence in article 4:

> "This responsibility is also incumbent upon those who, at the national or international level, define and apply the ethical codes of the professions."

124. The delegation of India requested the inclusion of its proposal, identified as CRP.10, which reads as follows:

> "Individuals or groups have in their professional activities to promote and respect human rights and fundamental freedoms and to observe applicable international and national standards.".

The delegation of India advocated deleting the phrase "in their respective countries" because it believed that it contained the implication that professionals, who significantly included the military, did not have to respect such rights when they act outside of their respective countries.

125. The delegation of Senegal agreed with the delegation of India on the deletion of the phrase "in their respective countries". The delegation of Senegal also expressed its agreement with the formulation of the delegation of Norway, which should become part of the proposal of the delegation of India.

126. The texts were then referred back to the Informal Drafting Group.

127. At its 7th meeting, on 22 January 1991, the Working Group took up consideration of document CRP.16, concerning article 4 of chapter IV. That

document contains a text agreed upon in the Informal Drafting Group reflecting further evolution of the concepts expressed in CRP.9, CRP.10 and of the proposal of the delegation of France on the same issue:

> "Individuals or groups whose professional or occupational activities may affect the enjoyment of [universally recognized] human rights and fundamental freedoms have, in the exercise of their profession or occupation, the right and responsibility to promote, respect and observe these rights and freedoms and the dignity and self-respect of every individual, as well as such national and international standards of professional or occupational conduct or ethics as may be applicable. This right and responsibility is also incumbent upon those who establish or supervise the implementation of such standards."

128. The Cuban delegation stated that, for the sake of consistency, there was no reason to omit the word "institutions" after the words "Individuals or groups" at the beginning of the article.

129. The Chairman of the Informal Drafting Group argued that "institutions" would be inconsistent with the wording in other parts of the declaration.

130. Vagueness and indefiniteness would result if the new word were introduced, commented the United Kingdom delegation. Chapter IV, article 4, covered individuals and also those groups whose activities had an impact on human rights. It would improperly expand the scope of the declaration to include under its purview "all institutions". Several delegations expressed support for the interpretations by the delegation of the United Kingdom.

131. The delegation of China stated that it would reserve its right to make further comments on the formulation of CRP.16 during the second reading, if the Working Group was convinced that an amendment of the present text was necessary at that time.

132. Finally, the Working Group accepted the text drafted in CRP.16 and decided to adopt provisionally the text of article 4, chapter IV, in that version (for the text, see annex I).

Introduction of CRP.19

133. The International Commission of Jurists proposed that the following text (CRP.19) for chapter IV, article 4, be considered by the Working Group on second reading:

> "each State shall strive to encourage and facilitate the exercise of this right and responsibility."

Introduction of CRP.6

134. At the 3rd meeting, on 17 January 1991, the delegation of Cuba introduced a new draft article for chapter IV, partially inspired by the proposal of the delegation of Senegal, on the rights of individuals and the rights of

States, and referred to in articles 20 and 29 of the Universal Declaration of Human Rights. The proposal of the delegation of Cuba, which should be placed, in its opinion, as the last article of chapter IV, identified as CRP.6, reads:

Article "X" (final)

"(a) In the exercise of the activities mentioned in article 2 of the present chapter, all individuals shall act in accordance with their duties towards the community to which they belong; in particular, those relating to the promotion of the social and cultural identity of the community, and self-determination of its people as well as to the attainment of the equal rights and full dignity of its members.

(b) Such activities shall in no circumstances be incompatible with the purposes of the Charter of the United Nations."

Chapter V

135. The Working Group considered further elements to chapter V of the Declaration at its 2nd, 6th, 7th, 8th and 9th meetings (the texts are reproduced in annex V of the present report).

The Working Group had before it ten proposals:

(a) The delegation of Senegal introduced two texts, identified as E/CN.4/1991/WG.6/CRP.4 and 15;

(b) The delegation of Austria introduced a document identified as E/CN.4/1991/WG.6/CRP.5;

(c) The delegation of China submitted two texts, identified as E/CN.4/1991/WG.6/CRP.12 and CRP.12/Rev.1;

(d) The delegation of Portugal introduced E/CN.4/1991/WG.6/CRP.13;

(e) The delegation of Cuba introduced E/CN.4/1991/WG.6/CRP.23.

All these texts are reproduced in full in annex V.

136. They were extensively addressed in the Informal Drafting Group. Three texts were agreed upon in the Informal Drafting Group and submitted to the Working Group in E/CN.4/1991/WG.6/CRP.16, 22 and 24.

Consideration of CRP.16

137. At its 7th meeting, on 22 January 1991, the Chairman of the Informal Drafting Group introduced the CRP.16 text as the result of extensive discussion in the Group of various proposals submitted to it. He stated

that the denotation of "A" did not prejudice any placement within the final chapter V. The issue of placement had not yet been discussed in the Informal Drafting Group. The text reads as follows:

> "Nothing in the present declaration shall be construed as impairing or contradicting the purpose and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights and the International Covenants on Human Rights [and other international instruments in this field]."

138. The view was expressed by the delegation of Cuba, supported by the delegation of Syria, that this text required reference to other international and regional human rights instruments.

139. The delegation of France objected to extensive reference to other international and regional instruments in this particular declaration. Conformity with international instruments was implied in the declaration by its reference to the Charter of the United Nations. No attempts should be made to invoke reference to regional instruments because many States opposed encouraging the application of regional texts. The delegation of the United States shared this view.

140. The delegation of Portugal stated for the record that it believed a consensus could be achieved if another phrase were substituted for the one in brackets. Specifically, the delegation proposed to express the idea behind the phrase as a prohibition rather than as an obligation. Thus, the declaration would state that individuals and institutions must not derogate from other treaties and conventions. This view was supported by the Cuban delegation, which stated that the text as currently composed could be construed to sanction a derogation from other conventions.

141. It was decided to provisionally adopt the text as submitted by the Drafting Group and come back to the wording within square brackets in the second reading.

Consideration of CRP.22

142. At its 8th meeting on 23 January 1991, the Chairman of the Informal Drafting Group introduced a new element for chapter V, denoted "B" and reproduced in CRP.22, the text of which reads as follows:

> "In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society and in accordance with applicable international obligations and commitments."

143. The Chairman reported that this text drew heavily from the proposal submitted by the delegation of Senegal (CRP.15). However, he noted, certain problems nevertheless arose concerning the term "everyone" and the phrase "by law".

144. The Chairman continued to state that some unclearness still remained among members of the Informal Drafting Group about the meaning of the term "by law" in the paragraph under discussion. The concept "by law" refers to norms passed by parliament or the legislature provided they are based on law. To most delegates, this understanding is implicit in the words. One delegate thought it could be expressed more clearly but he joined the consensus. He further recalled that the final placing of this text was not yet considered by the Informal Drafting Group.

145. The Working Group provisionally adopted the text submitted by the Informal Drafting Group.

146. The following delegations recorded their position thereto.

147. The delegation of the United States joined consensus on this provision, but would have preferred that no limitations whatsoever had been put on the rights and freedoms referred to in this declaration. Its delegation also noted that the phrase "and in accordance with applicable international obligations and commitments" could be improved upon as a stylistic matter on second reading. He suggested that the last line of chapter V "B" include the words "to be established" between the words "and" and "in accordance", so that the phrase would read "and to be established in accordance with applicable international obligations and commitments". He expressed the hope that the group would consider adopting this revision in the second reading.

148. The delegation of the United Kingdom shared this view and reserved the right to return to the following words "and in accordance with applicable international obligations and commitments" in order to clarify, from a stylistic point of view, their relationship with the paragraph as a whole.

149. The delegation of China stated for the record that it was not in complete agreement with the adopted text because it had preferred the spirit of its amendment to CRP.12/Rev.1 which stated that States must guarantee the rights referred to in the declaration through legislative, administrative and other measures.

150. Further, the delegation of China had been of the view that the term "law" included those administrative measures based on law. The delegation would not insist on certain wording but, as a matter of principle, noted that it would not make any concessions. It stated:

> "The Chinese delegation states that the word 'law' as is mentioned in article B, chapter V, should be understood to include the 'administrative' steps in section B, chapter I. It holds that the responsibility of the State in effectively ensuring the human rights and fundamental freedoms contained in the declaration can be really put into effect only if the steps in article B, chapter I, are fully respected and observed."

151. The delegation of Cuba submitted the following statement for inclusion in the report:

> "Interpretation of the words '... limitations as are determined by law ...' in the specific context of "B", chapter V of the present draft declaration as adopted in the first reading by the Working Group on 23 January 1991 and the general context of article 29-2 of the Universal Declaration of Human Rights.
>
> In both contexts, 'law' means any law and subordinate legislation and also includes constitutional provisions, legislative decrees, acts, orders, proclamations, rules, by-laws and any administrative regulations, enacted or issued by the legislative authority or any body or person having power or authority under law to enact or issue them.
>
> The words 'acting individually or in association with others' in the second line of "B" in chapter V, as adopted in first reading by the Working Group on 23 January 1991, have the same connotation as the words 'individuals, groups and organs of society' also used elsewhere in the first reading of the text adopted in this and previous years. They are, in fact, totally equivalent in the context of "B", chapter V. Consequently, the limitations referred to in "B" apply not only to individuals (acting individually or in association with others in groups of any kind, or in their capacity as members of organs of society), but also to those groups or organs of society considered as juridical persons with rights and duties distinct from those pertaining to their individual members."

152. The delegation of France submitted the following written statement on chapter V, "B", for inclusion in the report:

> "The French delegation interprets chapter V, paragraph 2, as authorizing limitations on the enjoyment of human rights and fundamental freedoms only on condition that such limitations are in keeping with legitimate objectives.
>
> "Moreover, individuals or groups legally exercising the rights accorded to civilians are entitled to seek effective remedies, in the sense of chapter IV, paragraph 1, against measures imposing such limitations on them."

153. The observer delegation of Syria stated that it understood chapter V, "B" including limitations to which individuals and groups and other institutions within the community felt obligated.

154. The observer delegation of the International Commission of Jurists echoed the concerns of France and the United States that existing human rights instruments provided sufficient limitations, and that no further limitations were needed here although it acknowledged the necessity of adopting a text. The International Commission of Jurists added that it hoped that "required by law" referred to laws prescribed in advance and not those of an ad hoc or

retroactive nature or in conflicts with international human rights law. This delegation provided the following statement for inclusion in the report:

> "The text in CRP.22 is reasonable, given that it is derived from article 29 of the Universal Declaration. None the less, the International Commission of Jurists delegation is not persuaded that any such limitation clause is needed in the current declaration. The efforts of human rights defenders are already subject to limitations stated in the main human rights instruments, and are often subject to extensive restrictions in practice."
>
> Within CRP.22, it is our understanding that the phrase "determined by law" carries with it the idea that any limitations on rights and freedoms ought to be clearly prescribed in advance by law. One Working Group submission proposes that the declaration explicitly permit the curtailment of rights and freedoms by 'administrative of other steps'. The taking of such steps might later be interpreted to be in conformity with applicable laws but in some cases could appear to authorize ad hoc measures that inappropriately forestall or restrict the timely exercise of rights and freedoms. The suggested terminology also lacks a basis of precedent in relevant existing international instruments.
>
> Regarding the concluding reference to international obligations, it is our understanding that such linkage is not intended to lead to any limitations greater than those provided in the current declaration."

155. The observer delegation of Amnesty International stated that limitations were provided for by numerous international instruments and there was no need to draft more limitations in this declaration. The term "by law" was understood by this delegation as not creating greater restrictions. Amnesty International could not favour the notion of "law" in this context including "administrative and other measures" because it could lead to a denial of the rights enshrined in the declaration. The purpose of the declaration was, after all, to protect human rights defenders from restrictions amounting to grave violations of their own human rights, including imprisonment, torture, disappearance and extrajuridical executions.

Consideration of CRP.24

156. At its 9th meeting, on 24 January 1991, the Working Group provisionally adopted the following text submitted by the Informal Drafting Group in CRP.24:

> "Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this Declaration or at their limitations to a greater extent than is provided for in this declaration."

This text was intended to become paragraph "C" of chapter V.

157. The following interpretive statements were made for inclusion in the report.

158. The delegation of France stated:

> "The delegation of France interprets chapter V, paragraph "C", as establishing no limitations on the enjoyment of human rights and fundamental freedoms other than those established in paragraph "B" of the same chapter."

159. The United States delegation recommended that the Group come up with a common approach to the idea of "individuals, groups or organs of society", and hoped that a consistent phrasing would be found.

160. The delegation of Cuba stated:

> "Interpretation of the following words in CRP.24 (chapter V, "C") as adopted by the Working Group in first reading on 24 January 1991: '... to a greater extent than is provided for in the declaration ...'
>
> In agreeing to the consensus achieved, it is the firm belief of the delegation of Cuba that the eventual contents of this declaration in chapter V, "C" cannot, in any way affect (neither extending nor restricting) any limitation established in other international human rights instruments accepted by the respective State, nor the role of national law in governing the implementation of the rights and freedoms referred to in this declaration."

161. The delegation of the United Kingdom shared the concern of the delegation of the United States with regard to the wording in the second line of CRP.24. A solution should be found in the second reading.

Introduction of Soviet text

162. At its 8th meeting on 23 January 1991, the Working Group took cognisance of the following proposal for chapter V introduced by the delegation of the Union of Soviet Socialist Republics in the Informal Drafting Group:

> "The enjoyment of the rights referred to in this declaration must not lead to national, racial or religious hatred that constituted incitement to discrimination, hostility or violence."

163. The delegation of the Union of Soviet Socialist Republics stated that it considered its proposal to contain no new elements, as it was similar to the proposal reproduced in annex III of the 1990 report.

164. The Chairman of the Informal Drafting Group said that the proposal was very close conceptually to the document CRP.13 of the delegation of Portugal and to document CRP.15 of the delegation of Senegal. Therefore, he agreed that the proposal did not constitute a conceptually new element.

165. The Chairman-Rapporteur ruled that although the deadline for conceptually new proposals was passed, this text had emerged in the course of the Informal Working Group's deliberations of proposals submitted within the deadline and accordingly was receivable. It was subsequently designated E/CN.4/1991/WG.6/CRP.25.

Consideration of the "duties and responsibilities" issue

166. At the 9th meeting, on 24 January 1991, the Chairman of the Informal Drafting Group stated that the members of the Group agreed to consider the following documents, all referring to chapter V:

(a) E/CN.4/1991/WG.6/CRP.6, proposed by the delegation of Cuba;

(b) E/CN.4/1991/WG.6/CRP.12/Rev.1, proposed by the delegation of China;

(c) E/CN.4/1991/WG.6/CRP.15, proposed by the delegation of Senegal; and

(d) E/CN.4/1991/WG.6/CRP.23, proposed by the delegation of Cuba.

167. Furthermore, the Chairman of the Informal Drafting Group recalled that elements of the documents of the delegation of China and Senegal were widely considered during the drafting process of article "A", "B" and "C" of chapter V.

168. There was no unity, continued the Chairman, on whether the documents CRP.17 and CRP.18, both proposed by the delegation of Cuba, belonged to the problem area of chapter V.

169. As regards document CRP.23, the delegation of Cuba stressed that the proposal was not designed to replace the proposal CRP.12 and CRP.12/Rev.1 of the delegation of China, nor the proposal CRP.15 of the delegation of Senegal, but it was simply a complementary document.

170. As regards document CRP.6, the delegation of Cuba pointed out that such a proposal was initially devoted to chapter IV. Then, several delegations requested to consider it under chapter V. The delegation of Cuba felt that all proposals before the Working Group were constructive.

171. Concerning chapter V and, in particular, CRP.12 and CRP.15, the observer delegation of the International Commission of Jurists requested the inclusion of the following statement in this report:

> "The views of the International Commission of Jurists delegation agree with the persuasive statements presented today by the distinguished representatives of France, Sweden and the United States of America, and by Amnesty International in the plenary of 21 January. Though every right is accompanied by some duties, these are not always the duties of the holder of the right. This is especially so with respect to rights which attempt to protect individuals and groups against arbitrary exercise of power by the State."
>
> "The helpful documents before us on the question of duties deal with important moral obligations. Yet the characterization of 'duties' contemplated in many of the proposed provisions travels some distance beyond the concept of moral duties proclaimed in the Universal Declaration. This new language does not seem harmonious with a human rights instrument designed to lighten existing restrictions on the work of those who strive to defend human rights in their own communities and elsewhere."

172. At the 10th and 11th meetings, on 25 January 1991, the Chairman of the Informal Drafting Group reported that the Group continued its work on the subject of duties and responsibilities. A detailed and important discussion had taken place. Although the Group was inspired by a spirit of constructivity and goodwill, it was not yet able to complete the drafting task.

173. The delegations of the United Kingdom and the United States of America shared the view that it would be inappropriate for the declaration to include provisions relating to any duties of individuals or groups. The object and purpose of the declaration is to secure the rights of human rights defenders to promote and protect the human rights of others. These rights imply duties for States and Governments, not for individuals.

174. The Chairman of the Informal Drafting Group further stated that no adoptable proposals had resulted from the discussions held in the Group concerning chapter V, although this was more due to lack of time than to disagreement among the participants.

175. The Chairman-Rapporteur requested the Chairman of the Informal Drafting Group to submit a report which could be annexed to the Working Group's report, reflecting the ideas and main points of view which had been presented to the Informal Drafting Group, so that its productive debate would not go unrecorded and could serve as a basis for future discussions.

176. It was observed by the delegation of Cuba that one text discussed in the Informal Drafting Group had received considerable support and could well gain broad consensus in the future. The delegation expressed its hope that the report would properly express the large degree of agreement which the Informal Drafting Group had achieved.

177. The Chairman-Rapporteur confirmed that all delegations would have the opportunity to append any comments they thought necessary to the report of the Chairman of the Informal Drafting Group. These comments would also appear in the annex.

178. The Chairman-Rapporteur thanked the delegate of Norway for his exceptional service to the Working Group through his chairmanship of the Informal Drafting Group. This statement was warmly applauded by the Working Group.

Future work

179. At its 11th meeting, on 25 January 1991, the Working Group considered the shape of its report and future work.

180. The Chairman-Rapporteur observed that the 1991 report of the Working Group to the Commission should utilize the format from previous years. In addition to the list of documents considered by the Working Group, including all CRPs, and the report of the consideration of articles, several annexes would be contained therein:

(a) Annex I: Texts provisionally adopted by the Working Group at the first reading, including those texts adopted this year.

(b) Annex II: Texts considered by the Group but not yet finally approved, including preambular paragraphs G, H and I, which will be added to the preambular paragraphs A, B, C, D, E and F. A footnote will indicate that there was a general agreement in the Working Group as to the general thrust of paragraphs G, H and I, but that further work is needed to develop the final form in which these ideas will be expressed. The proposals regarding the positioning of these texts will be in brackets.

The Chairman-Rapporteur noted that two of the three delegations which were recorded in the 1988 and 1989 reports as opposing the transfer of paragraphs III and IV of chapter II to annex I, no longer opposed that transfer. The delegation of the Union of Soviet Socialist Republics clarified that it is not opposed, in principle, to the inclusion of paragraphs III and IV in chapter II, but the delegation felt that these paragraphs would need more deliberation before they could be adopted at a first reading.

(c) Annex III: Issues extensively discussed in the Working Group on which texts have not been finalized. This would cover both the report of the Chairman of the Informal Drafting Group on the "Duties and responsibilities" issue (chap. V) and on the funding issue (chap. III), the text from annex II of last year and the two proposals submitted this year.

(d) Annex IV: Texts submitted to the Working Group but which it has not yet discussed.

181. Next year's participants would therefore begin with the working documents contained in annex II and then move to consider unfinished work such as the funding question in chapter III and the remainder of chapter V.

182. The delegation of Sweden, supported by the observer for the International Commission of Jurists, requested recognition in the report of its proposed alternative to CRP.18, based on paragraph 4 of the Covenant on Civil and Political Rights. It was agreed that this comment be incorporated in the body of the text and that a footnote would be included in annex II.

183. The delegation of Senegal requested that the unfinished section of its proposal to chapter V on responsibilities and duties be included in the report. It was so agreed.

184. It was also confirmed that the report would reflect that CRP.11 and CRP.14 were introduced, but not discussed.

185. Then a brief discussion took place on whether a "technical review" of the text of the draft declaration was needed and, if so, when. Also at issue was whether, in association with the technical review, all United Nations Member States, international organizations, etc., should be sent the first-reading text, once it is complete, and invited to submit comments. The Chairman-Rapporteur pointed out that the first reading should be completed within four more meeting days at most. If work was then interrupted, he said, there would be a loss of momentum.

186. Several delegations expressed the wish for the Working Group to meet for two weeks at its next session to complete the first reading of the few remaining paragraphs and continue immediately thereafter with the second reading. Several other delegations approved this course of action because of the urgency of the rights promoted by the declaration. The delegation of Cuba, however, favoured completing the first reading in a one-week session in 1992, and completing the second in 1993, after a technical review had been undertaken by the Secretariat and Governments would have had the opportunity to submit recommendations.

187. At the 11th and final meeting of the Working Group on 28 February, the Chairman-Rapporteur submitted a draft of the present report which had previously been circulated to participants. As he had discussed informally with many participants, it includes an annex VI, which is a compilation of the texts in annexes I, II and IV and of the issues addressed in annex III. It shows the present state of the whole draft declaration as a continuous text, identifying clearly the status of the various passages.

188. The Chairman-Rapporteur also circulated a draft resolution to be submitted to the Commission on Human Rights at the current session, incorporating an idea for which he was indebted to the delegation of Colombia. This would have the Commission ask the Secretary-General to circulate the present report to all United Nations members, and invite them to submit comments on the text in annex VI in time for consideration by the Working Group. The Working Group's final meeting at which it would complete the first and second readings of the draft declaration, in the light of any such comments, would be in October 1991. This would enable the Secretariat to undertake a technical review of the second-reading text in time for the declaration to be adopted in final form by the Commission at its forty-eighth session.

189. The delegation of Cuba also circulated a draft resolution to be submitted to the Commission on Human Rights at the current session, incorporating the idea to meet for a period of five working days prior to the forty-eighth session of the Commission with the view to concluding the first reading of the draft declaration and requesting opinions of Member States and non-governmental organizations on the text adopted, as soon as possible.

190. In the extensive discussion of the future work programme, many delegations supported the "fast-track" approach suggested by the Chairman-Rapporteur; but several of them regarded it as perhaps over optimistic. Several other delegations saw it as essential that there be an opportunity, after first reading, for the views of Governments, non-governmental organizations and other relevant institutions to be sought and taken into consideration during the second reading. Many delegations spoke in favour of a ten-day session. Major scheduling difficulties were encountered against an autumn meeting of the Working Group.

191. The Chairman-Rapporteur said that he would take account of these views in redrafting the resolution, with a view to its adoption by consensus.

Adoption of the report

192. At its 11th meeting on 28 February 1991, the Working Group adopted the present report.

ANNEX I

Texts provisionally adopted by the Working Group at first reading

Chapter I

A

No one shall participate in violating the [universally recognized] human rights and fundamental freedoms of others, and no one shall be subject to punishment or adverse action of any kind for refusing [individually or in association with others], to violate or otherwise be associated with violations of [universally recognized] human rights and fundamental freedoms.

B

Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, inter alia, by adopting such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure that all persons, individually and in association with others, are able to enjoy these rights and freedoms in practice.

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels.

Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed.

[Language to be added reflecting the role of national and international law as well as other modalities, to be formulated when discussing issues assigned to chap. V.]

Chapter II

Title

The rights to know, to be informed about, and to impart to others knowledge of universally recognized human rights and fundamental freedoms.

Paragraph I

All persons have the right to know, and, individually as well as together with others, to be informed about, and to make known [their] universally recognized human rights and fundamental freedoms.

Paragraph II

Everyone has the right, individually as well as together with others,

(a) To seek, obtain, receive and hold information about these rights and freedoms [including access to information on the means by which these rights and freedoms are given effect in domestic legislative, judicial or administrative systems];

(b) To publish, impart or disseminate freely to others, views, information and knowledge of universally recognized human rights and fundamental freedoms.

Paragraph V

Everyone has the right to develop and discuss new human rights ideas and principles, and to advocate their universal acceptance.

Paragraph VI

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include:

(a) The publication and widespread distribution of national laws and regulations and of basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies.

3. The State has the responsibility to promote and improve the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes.

Chapter III

Article 1

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations, or, where relevant, groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 2

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others,

to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities directed against violations of human rights and fundamental freedoms.

Chapter IV

Article 1

In the exercise of the right to promote and protect the human rights referred to in the present declaration, as well as in the exercise of other [universally recognized] human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies in the event of violations of those rights.

Article 2

To this end, everyone has the right, inter alia, to:

(a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;

(c) Obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;

(d) Attend such relevant hearings or proceedings or, as the case may be, trials, to assess their fairness and compliance with national and international standards;

(e) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;

(f) Seek and accept such assistance of his own free choice in order to enjoy effectively the measures of protection referred to in this chapter;

(g) Unhindered access to, and communication with, international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures.

Article 3

To the same end, each State shall, inter alia:

(a) Ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration;

(b) Encourage and support the development of further institutions for the promotion and protection of [universally recognized] human rights and fundamental freedoms in all territory under its jurisdiction, such as ombudsmen, human rights commissions and other appropriate mechanisms;

(c) Conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a [serious] violation of [universally recognized] human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 4

Individuals or groups whose professional or occupational activities may affect the enjoyment of [universally recognized] human rights and fundamental freedoms have, in the exercise of their profession or occupation, the right and responsibility to promote, respect and observe these rights and freedoms and the dignity and self-respect of every individual, as well as such national and international standards of professional or occupational conduct or ethics as may be applicable. This right and responsibility is also incumbent upon those who establish or supervise the implementation of such standards.

Chapter V

A

Nothing in the present declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights and the International Covenants on Human Rights [and other international instruments in this field].

B

In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and

freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society and in accordance with applicable international obligations and commitments.

C

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration.

ANNEX II

Text extensively considered by the Working Group but not yet finally approved

Preamble

A

Mindful that the international community shall fulfil its solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

B

Reaffirming the importance of the International Covenant on Human Rights as major parts of international efforts to promote universal respect for the observance of human rights and fundamental freedoms.

Appealing strongly to all States that have not yet become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to do so, as well as to consider acceeding to the Optional Protocol to the International Covenant on Civil and Political Rights, so that these instruments acquire genuine universality.

C

Stressing that each State has a prime responsibility and duty to promote and protect universally recognized human rights and fundamental freedoms.

D

In international co-operation in the field of human rights, special attention should be given to the elimination of the massive and gross violations of the human rights of peoples and individuals which result from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.

E

All human rights and fundamental freedoms are indivisible and [interdependent/interrelated], without prejudice to the implementation of each of these rights and fundamental freedoms.

F

Recognizing that the maintenance of international peace and security contributes to the realization of the entire range of human rights, mindful that the absence of international peace should not be made an excuse for not realizing human rights.

G

Recognizing the right and the responsibility of individuals and groups to promote and disseminate human rights and fundamental freedoms in the international sphere as well as under national jurisdiction.

H

Recalling the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of human rights and fundamental freedoms for all persons in all countries of the world (to become the second preambular paragraph); 1/

I

Bearing in mind the important role played by other universal and regional Conventions and Declarations in the promotion and protection of human rights and fundamental freedoms (to be included after the present third preambular paragraph in annex II of document E/CN.4/1990/47). 2/

Chapter II

Paragraph III

Everyone has the right to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice, regardless of frontiers, and to solicit public attention on these matters by such means as public discussion, the use of the media, peaceful demonstrations and other [legitimate] forms of free and peaceful expression [in the spirit of objectivity, tolerance and fraternity].

Paragraph IV

Everyone has the right to contribute to the promotion and protection of human rights and fundamental freedoms [through measures] at the national [and international] levels[s]. 3/

Notes

1/ The delegation of Sweden proposed an alternative formulation to paragraph H, based on preambular paragraph 4 of the International Covenant on Civil and Political Rights. This suggestion was supported by the International Commission of Jurists. The proposal is reflected in the main body of the report, paragraph 34.

2/ There was general agreement in the Working Group on the basic thrust of paragraphs G, H, and I; however, it was felt that further work would be necessary to improve the language of these paragraphs in order that their contents reflect more completely the various views expressed.

3/ While other delegations were ready to adopt paragraphs III and IV of chapter II at first reading, it was the understanding of the delegation of the Union of Soviet Socialist Republics that these paragraphs require further discussion, and that the said delegation may offer new text for this proposal.

ANNEX III

Issues extensively discussed but on which texts were not agreed

Chapter III ("Funding")

There was extensive discussion at the 1990 session of the Working Group on the question of funding individuals and organizations concerned with the protection of [universally recognized] human rights. The main point at issue related to whether funding from external sources for the protection of human rights could be subject to limitations additional to those which apply to international fund transfers for other purposes. (For a fuller account of the discussion, see E/CN.4/1990/47, paras. 70 to 90). The outcome of that discussion was the text reproduced in annex II of E/CN.4/1990/47 amongst the draft elements for the declaration "extensively considered by the Working Group but not yet finally approved at first reading"; that text reads as follows:

Article 1

To the same end, each State shall, inter alia

...

(d) To solicit, receive and utilize voluntary financial and other contributions to be used for activities protected by this declaration/on the same non-discriminatory basis as other individuals and associations in the country/language to limit funding to national sources/delete concept entirely/language in chapter V to the effect that nothing in this declaration would legitimize infringement of the right of individuals and organizations promoting human rights to seek and obtain financial resources.

At the 1991 session of the Working Group the following two proposals were introduced as possible solutions to the outstanding problems, but they were not further discussed at this session.

Proposal of the delegations of Portugal and Sweden
(E/CN.4/1991/WG.6/CRP.11)

Chapter III, article 1

(d) To solicit, receive and utilize for the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms voluntary financial contributions.

Proposal of the delegation of Cuba
(E/CN.4/1991/WG.6/CRP.14)

Article "X" (final) [Unofficial translation]

For the purpose of helping to ensure the necessary independence and freedom of action in their activities directed to the promotion and protection of [universally recognized] human rights and fundamental freedoms, individuals, groups and institutions shall solely employ for such activities

funds and resources deriving from sources domiciled in the country in which the activities are to be undertaken. All remittances of such funds or other resources from abroad [from foreign sources?] shall be subject, on a non-discriminatory basis, to the national regulations applicable to such transactions in the country in question.

Chapter V ("Duties and responsibilities")

(Report by the Chairman of the Informal Drafting Group)

1. The Drafting Group conducted extensive discussions on the question of the responsibilities and/or duties towards the society in which the individual lives. The Drafting Group ran out of time and was unable to produce agreed texts in this area.

2. It was the wish of the participants in the Informal Drafting Group that the ideas and main points of view which had been presented to the Drafting Group should be reflected in the report to the Human Rights Commission. The Chairman of the Informal Drafting Group was asked to prepare a brief report for inclusion in this annex. The Chairman of the Informal Drafting Group made it clear that he was unable to include every idea or proposal which at any given moment had been floating in the Informal Drafting Group. The Chairman interpreted the wish of the Informal Drafting Group to be the following:

(a) To reproduce the different proposals which were presented in a written form (basically as CRPs);

(b) To present the Chairman's own understanding of the text on which the Informal Drafting Group was working when the Group had to adjourn its last session. This is done on the Chairman's own responsibility; furthermore, it is the Chairman's understanding that this text has no other standing than the rest of the proposals before the Informal Drafting Group;

(c) Invite the participants of the Informal Drafting Group to comment upon the result of the Chairman's efforts in accordance with (a) and (b) above.

3. The following proposals were before the Informal Drafting Group on this topic (presented according to CRP. numbers):

From: E/CN.4/1991/WG.6/CRP.6
17 January 1991

Proposal of the delegation of Cuba

"In the exercise of the activities mentioned in article 2 of the present chapter, all individuals shall act in accordance with their duties towards the community to which they belong; in particular, those relating to the promotion of the social and cultural identity of the community, and self-determination of its people as well as to the attainment of the equal rights and full dignity of its members."

From: E/CN.4/1991/WG.6/CRP.12
18 January 1991

Proposal of the delegation of China

"Everyone has duties, individually and in association with others, to the community in which alone the free and full development of his personality is possible."

From: E/CN.4/1991/WG.6/CRP.15
22 January 1991

Compromised propcsal by the delegation of Senegal

"It is the duty of all individuals and groups within the community to:

(a) Respect the rights, beliefs and cultural identity of others;

(b) Promote, develop and safeguard respect, tolerance and brotherhood, and act towards others in that spirit;

(c) Strive by teaching and education for the promotion, observance and respect of [universally recognized] human rights and fundamental freedoms, in recognition that everyone has duties to the community in which alone the free and full development of his personality is possible;

(d) Discourage racial hatred and all forms of racism and racial discrimination, and promote mutual understanding."

From: E/CN.4/1991/WG.6/CRP.23
24 January 1991

Proposal of the delegation of Cuba

(in an effort to combine the several written proposals on this chapter until 24/1/91)

"In recognition that everyone has duties to the community in which alone the free and full development of his/her personality is possible, it is the duty of all individuals, groups and organs of society to:

(a) Promote and protect the right of peoples to self-determination;

(b) Respect the rights, beliefs and cultural identity of others;

(c) Promote and protect the social and cultural identity of the society as a whole;

(d) Promote, develop and safeguard respect, tolerance and brotherhood and act towards others in that spirit;

(e) Strive by teaching, education and other suitable means, the promotion, observance and respect of universally recognized human rights and fundamental freedoms and the realization of equal rights and the full dignity of all its members;

(f) Combat racial hatred and all forms of racism and racial discrimination and promote mutual understanding; and

(g) To strive for the establishment of a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized."

23 January 1991

Proposal of the delegation of the Union of Soviet Socialist Republics in the Informal Drafting Group

"The enjoyment of the rights referred to in this declaration must not lead to national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

4. The "last version" of the text elaborated by the Informal Drafting Group, according to the Chairman's personal notes:

"Everyone has duties to the community in which alone the free and full development of his personality is possible. In this context everyone, individually and in association with others, has an important and positive role to play in promoting, protecting and securing respect for [universally recognized] human rights and fundamental freedoms, namely by teaching, education and other suitable means in order to contribute to a spirit of mutual understanding, pluralism and tolerance..." (End of the report of the Chairman of the Informal Drafting Group)

* * *

The Cuban delegation asked that the following be added to this report:

"It is the opinion of the delegation of Cuba that the following text reflected a considerable degree of possible consensus, in the final stage of the exploratory work done to find the possible content of article 'X' of chapter V (Duties of the individuals, groups and organs of society).

"Everyone has duties to the community in which alone the free and full development of his personality is possible. In this context, everyone, acting either individually or in association with others, should strive to play an important and positive role in promoting, protecting and securing respect for [universally recognized] human rights and fundamental freedoms, particularly with respect to the following issues:

(a) ..".

The delegation of Colombia asked that the following be added to this report:

"The view of the delegation of Colombia is that the right that this declaration intends to codify is unquestionable and deserves full recognition.

The duties of individuals and people exercising the right to disseminate human rights cannot be intended as a limitation of prerogatives, but as a guarantee against dogmatism and discrimination that can solely exist when an unique truth is established.

The delegation of Colombia understands the notion of duties as a responsibility that individuals and groups have to fulfil. The commitment to the dissemination of human rights in the global sense that the specialized international instruments contain.

As a result, this task will be carried out with respect for pluralism in all its manifestations and with respect for the common interest in accepting political, ideological, religious, racial, linguistic, etc. differences."

ANNEX IV

Texts submitted to the Working Group, but not yet considered

Proposal of the delegation of Cuba
(E/CN.4/1991/WG.6/CRP.17/Rev.1)

[Unofficial English translation]

Chapter I

The domestic legislation in effect in the respective country, and applicable international obligations or commitments accepted by the State, shall govern the effective materialization of all actions and activities related to the rights and freedoms referred to in this declaration.

Proposals of the observer delegation of the International Commission of Jurists

1. Proposed addition to chapter IV, article 4 (on second reading)
(E/CN.4/1991/WG.6/CRP.19)

"Each State shall strive to encourage and facilitate the exercise of this right and responsibility."

2. Proposed addition to chapter IV, article 3 (c) (on second reading)
(E/CN.4/1991/WG.6/CRP.20)

"and co-operate as necessary with any such investigation or enquiry".

Proposal of the delegation of Cuba
(E/CN.4/1991/WG.6/CRP.6)

[Unofficial English translation]

Chapter IV

Article "X" (final)

(a) In the exercise of the activities mentioned in article 2 of the present chapter, all individuals shall act in accordance with their duties towards the community to which they belong; in particular, those relating to the promotion of the social and cultural identity of the community, and self-determination of its people as well as to the attainment of the equal rights and full dignity of its members.

(b) Such activities shall in no circumstances be incompatible with the purposes and principles of the United Nations Charter.

ANNEX V

Texts relating to chapter V discussed in the Informal Drafting Group
(see paragraph ... of the present report)

Chapter V

[E/CN.4/1990/47, annex III]

Proposal by the delegation of Senegal relating to rights and responsibilities of individuals and groups

Introductory note

The delegation of Senegal would like to reiterate the concern it has expressed since the beginning of the Working Group's activities in 1986, in particular about the need to find a universally acceptable basis for the draft declaration.

The draft declaration, whose essential objective is to encourage the effective participation of the individual or groups in the promotion and protection of human rights, must, in order to be effective, aim at restoring a balance. As the terms of reference for the draft indicate, the Working Group must do everything possible to identify precisely the content of the concepts of "right" and "responsibility", so as to make them more operational.

Contrary to Senegal's expectations, the four chapters of the draft seem to give preference to the right of individuals as opposed to their duties.

The protection of rights is incumbent on every individual, group and organ of society; these have an obligation and, when this obligation is not translated into positive law, a duty and responsibility to defend them and to encourage their promotion.

The safeguarding of human rights depends not only on the commitment of the State, with which prime responsibility for their promotion and protection lies, but also on belief in their purpose by individuals, who are their beneficiaries and are accordingly required to defend them, but also to avoid infringing them.

For this reason, Senegal has expressed a wish for and emphasizes the inclusion of concepts of the "duty".

[E/CN.4/1991/WG.6/CRP.4]

Chapter V

(1) "It is the duty of everyone, individually and together with others, to encourage the promotion of human rights and to act, together with others, in a spirit of tolerance and brotherhood".

(2) The State has the prime responsibility and duty to encourage the promotion, protection and effective realization of human rights by taking specific legislative, administrative or other measures, at the national level or in co-operation with other States, in order to develop a peaceful social climate.

(3) It is the duty of the individual to respect the rights, beliefs and cultural identity of others, by recognizing that the enjoyment of rights and freedoms implies that everyone must discharge his duties within the community in which he lives.

(4) It is the duty of every individual within the community to promote, develop and safeguard respect and tolerance.

(5) It is the responsibility and duty of every organ of society to discourage racial hatred and to promote mutual understanding.

(6) Individuals and groups have a moral responsibility to act towards others in a spirit of brotherhood, to strive for the promotion and observance of universally recognized human rights and fundamental freedoms, and to strive by teaching and education to promote respect for these rights and freedoms, in recognition that everyone has duties to the community in which alone the free and full development of his personality is possible. [Preamble, article 1, article 29 UDHR]

(7) Every organ of society, as an organization under the control of the State, has the responsibility to promote and protect all universally recognized human rights and fundamental freedoms as well as all the rights guaranteed in any international instruments to which its State is a party. It shall strive to secure the universal and effective recognition and observance of these rights and freedoms and, by teaching and education, to promote respect for them. [Preamble UDHR]

(8) No individual, group or organ of society has a right to engage in any activity or to perform any act aimed at the destruction of any human rights and fundamental freedoms; nor to make any discrimination whatsoever in matters of these rights and freedoms in the treatment of persons, groups of persons or institutions on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [article 30 UDHR, article 2 DERD, article 2 ICCPR]

(9) It is the duty of individuals, groups or organs of society, exercising the rights provided for in this declaration, to conform to national legislation of States and to the purposes and principles of the Charter of the United Nations.

Proposal of the delegation of Austria
(E/CN.4/1991/WG.6/CRP.5)

Chapter V

A

In the exercise of the rights and freedoms which are set forth in this declaration, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

B

Nothing in the present declaration shall be construed as restricting or derogating from any rights defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

Proposal of the delegation of Cuba
(E/CN.4/1991/WG.6/CRP.6)

Article "X" (final)

(a) In the exercise of the activities mentioned in article 2 of the present chapter, all individuals shall act in accordance with their duties towards the community to which they belong; in particular, those relating to the promotion of the social and cultural identity of the community, and self-determination of its people as well as to the attainment of the equal rights and full dignity of its members;

(b) Such activities shall in no circumstances be incompatible with the purposes and principles of the United Nations Charter.

Proposal of the delegation of China
(E/CN.4/1991/WG.6/CRP.12/Rev.1)

(1) Everyone has duties, individually and in association with others, to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of the rights and freedoms which are set forth in this declaration, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society, and by the legislative, administrative and any other steps adopted in accordance with this declaration.

(3) Nothing in the present declaration shall be construed as restricting or derogating from the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights and the International Covenants on Human Rights.

Proposal of the delegation of Portugal
(E/CN.4/1991/WG.6/CRP.13)

Chapter V

C

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration.

Compromised proposal by the delegation of Senegal
(E/CN.4/1991/WG.6/CRP.15)

Chapter V

A

It is the duty of all individuals and groups within the community to:

(a) Respect the rights, beliefs and cultural identity of others;

(b) Promote, develop and safeguard respect, tolerance and brotherhood, and act towards others in that spirit;

(c) Strive by teaching and education for the promotion, observance and respect of [universally recognized] human rights and fundamental freedoms, in recognition that everyone has duties to the community in which alone the free and full development of his personality is possible;

(d) Discourage racial hatred and all forms of racism and racial discrimination, and promote mutual understanding.

B

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration.

C

In the exercise of the rights and freedoms which are set forth in this declaration, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society, and in accordance with this declaration.

D

Nothing in the present declaration shall be construed as restricting or derogating from the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights.

Proposal of the delegation of Cuba
(E/CN.4/1991/WG.6/CRP.23)

Chapter V

In recognition of the fact that everyone has duties to the community in which alone the free and full development of his/her personality is possible, it is the duty of all individuals, groups and organs of society to:

(a) Promote and protect the right of peoples to self-determination;

(b) Respect the rights, beliefs and cultural identity of others;

(c) Promote and protect the social and cultural identity of the society as a whole;

(d) Promote, develop and safeguard respect, tolerance and brotherhood and act towards others in that spirit;

(e) Strive by teaching, education and other suitable means, the promotion, observance and respect of universally recognized human rights and fundamental freedoms and the realization of equal rights and the full dignity of all its members;

(f) Combat racial hatred and all forms of racism and racial discrimination and promote mutual understanding; and

(g) Strive for the establishment of a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized.

ANNEX VI

Compilation combining the texts of annexes I-IV

Explanatory Note

This compilation is presented on the sole authority of the Chairman-Rapporteur as a purely technical document to show the present state of the text under negotiation. It does not prejudice in any way the outcome of the Working Group's future consideration of the draft declaration.

The compilation combines the four previous annexes into a single continuous text and thus comprises:

(a) Texts provisionally approved by the Working Group at first reading;

(b) Texts extensively considered by the Working Group but not yet finally approved (in parenthesis);

(c) The ideas currently under discussion on which texts have yet to be agreed (in square brackets and underlined);

(d) The remaining proposals not yet discussed in the Working Group (in square brackets and parenthesis).

When paragraphs are identified by letters rather than numbers, the order in which they will appear in the draft declaration is yet to be decided by the Working Group.

(Preamble)

A

(Mindful that the international community shall fulfil its solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.)

B

(Reaffirming the importance of the International Covenants on Human Rights as major parts of international efforts to promote universal respect for the observance of human rights and fundamental freedoms.)

C

(Stressing that each State has a prime responsibility and duty to promote and protect universally recognized human rights and fundamental freedoms.)

D

(In international co-operation in the field of human rights, special attention should be given to the elimination of the massive and gross violations of the human rights of peoples and individuals which result from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.)

E

(All human rights and fundamental freedoms are indivisible and [interdependent/interrelated], without prejudice, to the implementation of each of these rights and fundamental freedoms.)

F

(Recognizing that the maintenance of international peace and security contributes to the realization of the entire range of human rights, mindful that the absence of international peace should not be made an excuse for not realizing human rights.)

G

(Recognizing the right and the responsibility of individuals and groups to promote and disseminate human rights and fundamental freedoms in the international sphere as well as under national jurisdiction.)

H

(Recalling the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of [universally recognized] human rights and fundamental freedoms for all persons in all countries of the world [proposed to become the second preambular paragraph].)

I

(Bearing in mind the important role played by other universal and regional Conventions and Declarations in the promotion and protection of [universally recognized] human rights and fundamental freedoms.)

Chapter I

A

No one shall participate in violating the [universally recognized] human rights and fundamental freedoms of others, and no one shall be subject to punishment or adverse action of any kind for refusing [individually or in association with others], to violate or otherwise be associated with violations of [universally recognized] human rights and fundamental freedoms.

B

Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, inter alia, by adopting such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure that all persons, individually and in associations with others, are able to enjoy these rights and freedoms in practice.

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as much as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed.

([Cuba C])

([The domestic legislation in effect in the respective country,])
([and applicable international obligations or commitments accepted])
([by the State shall govern the effective materialization of all])
([actions and activities related to the rights and freedoms])
([referred to in this declaration.])

Chapter II

Title

The rights to know, to be informed about, and to impart to others knowledge of universally recognized human rights and fundamental freedoms.

Paragraph I

All persons have the right to know, and, individually as well as together with others, to be informed about, and to make known [their] universally recognized human rights and fundamental freedoms.

Paragraph II

Everyone has the right, individually as well as together with others,

(a) To seek, obtain, receive and hold information about these rights and freedoms, [including access to information on the means by which these rights and freedoms are given effect in domestic legislative, judicial or administrative systems];

(b) To publish, impart or disseminate freely to others views, information and knowledge of universally recognized human rights and fundamental freedoms.

(Paragraph III)

(Everyone has the right to study, discuss and form opinions as to)
(whether these rights and freedoms are observed, both in law and in)
(practice, regardless of frontiers, and to solicit public attention on)
(these matters by such means as public discussions, the use of the)
(media, peaceful demonstrations and other [legitimate] forms of free and)
(peaceful expression [in the spirit of objectivity, tolerance and)
(fraternity].

(Paragraph IV)

(Everyone has the right to contribute to the promotion and)
(protection of human rights and fundamental freedoms [through measures])
(at the national [and international] level[s]].)

Paragraph V

Everyone has the right to develop and discuss new human rights ideas and principles, and to advocate their universal acceptance.

Paragraph VI

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include:

(a) The publication and widespread distribution of national laws and regulations and of basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies.

3. The State has the responsibility to promote and improve the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes.

Chapter III

Article 1

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations, or, where relevant, groups;

(c) To communicate with non-governmental or intergovernmental organizations.

[Text on funding - see annex III. This text to be article 1 (d) or article 4]

Article 2

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the Government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities directed against violations of human rights and fundamental freedoms.

Chapter IV

Article 1

In the exercise of the right to promote and protect the human rights referred to in the present declaration, as well as in the exercise of other [universally recognized] human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies in the event of violations of those rights.

Article 2

To this end, everyone has the right, inter alia, to:

(a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;

(c) Obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;

(d) Attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;

(e) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;

(f) Seek and accept such assistance of his own free choice in order to enjoy effectively the measures of protection referred to in this chapter;

(g) Unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures.

Article 3

To the same end, each State shall, inter alia:

(a) Ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration;

(b) Encourage and support the development of further institutions for the promotion and protection of [universally recognized] human rights and fundamental freedoms in all territory under its jurisdiction, such as ombudsmen, human rights commissions and other appropriate mechanisms;

(c) Conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a [serious] violation of [universally recognized] human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 4

Individuals or groups whose professional or occupational activities may affect the enjoyment of [universally recognized] human rights and fundamental freedoms have, in the exercise of their profession or occupation, the right and responsibility to promote, respect and observe these rights and freedoms and the dignity and self-respect of every individual, as well as such national and international standards of professional or occupational conduct or ethics as may be applicable. This right and responsibility is also incumbent upon those who establish or supervise the implementation of such standards.

([Article "X" (final)])

([(a) In the exercise of the activities mentioned in article 2 of the])
([present chapter, all individuals shall act in accordance with their])
([duties towards the community to which they belong; in particular,])
([those relating to the promotion of the social and cultural identity])
([of the community, and self-determination of its people as well as to])
([the attainment of the equal rights and full dignity of its members.])

([(b) Such activities shall in no circumstances be incompatible with])
([the purposes and principles of the United Nations Charter.])

Chapter V

A

Nothing in the present declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights and the International Covenants on Human Rights [and other international instruments in this field].

B

In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society and in accordance with applicable international obligations and commitments.

C

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration.

D

[Text on Duties and responsibilities - see annex III]

([Union of Soviet Socialist Republics])

(["The enjoyment of the rights referred to in this declaration])
([must not lead to national, racial or religious hatred that constitutes])
([incitement to discrimination, hostility or violence."])